

Appl. No.: 10/667,225
Amdt. dated 04/17/2006
Reply to Office action of 10/18/2005

REMARKS/ARGUMENTS

In the Office Action dated October 18, 2005, the Examiner rejects Claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,241,949 to Parker in view of U.S. Patent No. 1,441,940 to Nafe, U.S. Patent No. 3,526,429 to Metzger, and U.S. Patent No. D320,701 to Hoff.

As will be explained in further detail below, Applicant has amended independent Claims 1, 7, 12, and 14 to further patentably distinguish the cited references. In addition, dependent Claims 4-6, 10, 11, 13, and 15 have been amended to clarify the claims, and dependent Claims 16-19 have been added to further define the claimed invention. In light of the following remarks, Applicant respectfully requests reconsideration and allowance of the claims.

Applicant initially submits that the prior art relied upon in rejecting Claims 1-15 is non-analogous art for purposes of an obviousness rejection under 35 U.S.C. § 103(a). “Any analogous or pertinent prior art plays a role in the determination of the patentability of the claims at the time of invention.” *Beckson Marine, Inc. v. NFM, Inc.*, 292 F.3d 718, 726 (Fed. Cir. 2002). A prior art reference is analogous if the reference is in the field of applicant’s endeavor or, if not, the reference is reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

Parker relates to a rockable piece of furniture, Metzger relates to a rocking chair, Nafe relates to a rocking amusement device, and Hoff relates to a rocking chair. As such, Applicant respectfully submits that the cited art, which generally relates to rocking chairs or rocking amusement devices, is clearly non-analogous art. Rocking chairs and amusement devices are not “reasonably pertinent” to solving the problem of properly stretching the quadriceps muscle and applicable to injury prevention and treatment of said muscles. In particular, rocking chairs are configured to accommodate a subject in a seated position, while the claimed invention relates to accommodating a portion of a subject’s leg in a manner that properly stretches the quadriceps muscle. The anatomical differences required to stretch the quadriceps versus simply accommodating a seated subject are clearly unrelated and, therefore, the problems to be solved are also unrelated. As such, Applicant submits that the cited references are not “reasonably pertinent” to the problem to be solved and are, thus, non-analogous art.

Not only are the references from different fields and unrelated to lower extremity injury rehabilitation and stretching, but the requisite motivation or suggestion to combine Parker with either Metzger, Nafe, or Hoff is also otherwise lacking. In order to properly combine references, a teaching or motivation to combine the references is essential. *In re Fine*, 337 F.2d 1071, 1075 (Fed. Cir. 1988). In fact, the Court of Appeals for the Federal Circuit has stated that, “[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight.” *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999). Although the evidence of a suggestion, teaching, or motivation to combine the references commonly comes from the prior art references themselves, the suggestion, teaching, or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be solved. *Id.* In any event, the showing must be clear and particular and “[b]road conclusory statements regarding the teaching effect of multiple references, standing alone, are not ‘evidence’.” *Id.*

The Examiner finds that it would have been obvious to modify Parker to include rocking surfaces having constant radii based on a combination of Metzger and Nafe. Parker discloses curved bottom supports that include at least three different radii, while “[a]ll the other patent designs incorporate a half-circle, using a single radius for the bottom curve” (col. 1, lines 42-43). In addition, Parker discloses that the front curve provides a “fast sweeping backward motion,” the middle section “slows the chair down,” while the rear elongated curve “gives the full, but secure, 125° rock to the ears or stops” (col. 1, lines 46-50). Furthermore, Parker discloses that:

The bottom curve of each side piece 1,2 on which the device rocks is critical to satisfactory operation, same being a combination of curves or an irregular curve 12 and blended into the reverse curve 13 of the ears 9 and 10 which prevent the device from overturning when said ears contact the floor at the backward limit of rock (about 125°). Col. 2, lines 31-37.

In contrast, both Metzger and Nafe disclose semi-circular rocking surfaces. Therefore, Parker teaches away from “all the other patent designs” having a rocking surface with a constant radius, as recited by the claimed invention. In addition, Parker discloses a rocking surface that limits rocking motion to about 125°, while Metzger is configured to allow a range of about 90°

of rocking motion and Nafe is configured to allow rocking motion over a range of about 180°. As such, Parker teaches away from any purported combination with either Metzger or Nafe and such combination would also render Parker unsuitable for its purported “unique 125° rock.”

Similarly, there is no motivation or suggestion to combine Parker with Hoff, as Parker also teaches away from such a combination. The Examiner believes that it would have been obvious to modify Parker to include angularly converging platform surfaces in light of the disclosure of Hoff. However, Parker discloses that “[a]n important factor of the seat is the positioning of the back rest and its height from the floor” (col. 2, lines 26-27). In particular, Parker discloses that “[t]he placement and shape of the body support piece, together with the depth of the cushion is imperative in achieving a 125° rock” (col. 1, lines 35-39) (emphasis added). The back section of Parker is long and extends between a seat and a head rest (col. 1, lines 30-32). Conversely, Hoff simply discloses a seat and backrest that are generally perpendicular to one another, which is clearly distinguishable from the configuration of the body support piece of Parker. Thus, Parker teaches away from any combination with Hoff, as the head support, back rest, and seat are “imperative” features.

Therefore, Applicant submits that the rejection of independent Claims 1, 7, 12, and 14 under 35 U.S.C. § 103(a) is overcome. Because each of the dependent claims includes the limitations of a respective independent claim, the dependent claims are allowable for at least those reasons discussed above.

Moreover, Applicant submits that although the dependent claims are distinguishable for at least those reasons discussed with respect to a respective independent claim, several of the dependent claims are further distinguishable from the cited references. For example, none of the cited references discloses at least one angularly converging platform surface having at least one indentation for receiving the user's shin bone when the user's knee is received in the recess in a bent condition, as recited by dependent Claims 4 and 10. Similarly, none of the cited references discloses at least one indentation that is defined in, and extends substantially along, a respective angularly converging platform surface, as recited by new dependent Claim 17. For example, see item #55 shown in Figure 2 of the present application. Conversely, none of the cited references

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discloses an indentation for receiving a shin bone, let alone an indentation extending substantially along a converging platform surface, as recited by the claimed invention.

Additionally, none of the cited references teaches or suggests that a substantial portion of each upper platform surface is configured to rest on a generally planar surface, as recited by dependent Claim 6. Similarly, none of the cited references, taken alone or in combination, teaches or suggests that each upper platform surface is substantially planar, as recited by new dependent Claims 18 and 19. In this regard, each of Parker, Metzger, Nafe, and Hoff discloses curving or non-planar edges extending between respective rocking surfaces. For instance, see the top curve (14) of Parker, the arcing longitudinal edges of side frames (10, 12, 14) of Metzger, the V-shaped recesses (1^c) of Nafe, and the non-planar edges of Hoff. In contrast, Claims 18 and 19 recite that each upper platform surfaces extending between respective rocking surfaces is substantially planar, while Claim 6 recites that a substantial portion of each upper platform surface is configured to rest on a generally planar surface.

Accordingly, dependent Claims 4, 6, 10, and 17-19 are distinguishable from the cited references, taken alone or in combination, for at least those additional reasons discussed above.

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CONCLUSION

In view of the amendments and remarks presented above, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Trent A. Kirk".

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 17, 2006

A handwritten signature in black ink, appearing to read "Lisa Rone".

Lisa Rone